

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

WATE, L.P., licensee of Television Station WATE-TV, Knoxville, Tennessee, by its attorneys and pursuant to Section 1.429(f) of the Commission's rules, hereby opposes the petition filed by South Central Communications Corporation ("SCCC"), SWMM/Knoxville Corporation ("SWMM") and Channel 26, Ltd. ("Channel 26" and, with SCCC and SWMM, the "Petitioners") seeking reconsideration, in part, of the Commission's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* (the "*Reconsideration Order*")¹ in the above-referenced proceeding. In the *Reconsideration Order*, the Commission rejected SCCC's petition for reconsideration of the *Sixth Report and Order*² and reaffirmed the decision to allot DTV Channel 26 to Knoxville and assign it to WATE-TV. As demonstrated below, Petitioners fail to provide any basis for altering that determination and their petition should be rejected out of hand.

¹ MM Docket No. 87-268, FCC 98-24 (rel. Feb. 23, 1998).

² Sixth Report and Order in MM Docket No. 87-268, 7 CR 997 (1997).

I. Petitioners Provide No Basis For Altering the Decision to Allot Channel 26 to DTV and Their Further Petition for Reconsideration Should Be Dismissed as Repetitious

The facts of this case are straightforward. In 1987, the Commission imposed a freeze on the acceptance of applications for new stations in certain markets in order to "preserve spectrum options in areas where we believe that additional station assignments would unduly restrict possibilities for providing additional spectrum for advanced television."³ Each of the Petitioners' applications was filed after the imposition of the freeze and each application sought a waiver of the freeze.⁴ Thus, each Petitioner was fully aware at the time of filing its application that the Commission could determine to allocate new DTV channels in a manner that would preclude the grant of its application.

In its *Sixth Further Notice of Proposed Rule Making* in this proceeding,⁵ the Commission proposed to seek to accommodate applications seeking a waiver of the freeze, but, because of the very real possibility that the applications could have a negative impact on the development of the DTV Table of Allotments, specifically noted that it "reserved the right, in specific cases, to determine that the public interest is better served if they are not granted . . ."

³ See Order, RM-5811 (Mimeo No. 4074, rel. July 17, 1987).

⁴ See FCC File Nos. BPCT-890405KF(SWMM); BPCT-890913KG (Channel 26); and BPCT-960920LJ(SCCC).

⁵ 11 FCC Rcd 10968 (1996) (the "Sixth Further Notice").

⁶ Id. at 10992.

Ultimately, the Commission determined that the public interest was best served by allotting Channel 26 in Knoxville for DTV purposes and assigning it to WATE.⁷ SCCC sought reconsideration of that decision, raising essentially the same claims that it makes now.⁸ In the *Recon. Order*, the Commission rejected SCCC's arguments, concluding that the allotment was "needed and used for DTV."⁹

Section 1.429(i) of the Commission's rules deals with petitions for reconsideration that, like Petitioners here, challenge an order that itself disposed of a petition for reconsideration. 47 CFR § 1.429(i). Except for situations in which the reconsideration order "modifies rules adopted by the original order," the second petition for reconsideration may be dismissed by the staff as repetitious. *Id.* This rule is based, in part, on the fact that "[t]he Communications Act, our rules and the need for administrative orderliness require petitions to raise issues in a timely manner."¹⁰ To further that goal, the Commission has exercised its discretion to refuse

⁷ Sixth Report and Order, *supra* at 1079.

⁸ SCCC Petition for Reconsideration, MM Docket No. 87-268 (Filed June 13, 1997).

⁹ Recon. Order, *supra* at Paragraph 627. In discussing SCCC's original petition for reconsideration, the Commission noted the argument of Young Broadcasting Inc. (which controls WATE, L.P.) that SCCC's proposal to assign DTV channel 5 to WATE would result in the station having "both its NTSC and DTV channels potentially outside the core area." *Id.* at Paragraph 625. Petitioners argue that this reference to Young's pleading demonstrates that the Commission mistakenly "relied" on this argument in rejecting SCCC's petition. Petition at 7-8. This claim is misguided. There is no basis for concluding that the mere recitation by the Commission of an argument raised in the opposition to the petition for reconsideration is evidence that the Commission "relied" on the argument in reaching its decision.

¹⁰ Implementation of the AM Expanded Band Allotment Plan, MM Docket No. 87-267, FCC 98-69 (rel. Apr. 28, 1998) at ¶ 7 ("AM Expanded Band").

to consider repetitious petitions for reconsideration.¹¹ Here, the *Recon. Order* rejected SCCC's prior petition for reconsideration and merely reaffirmed the prior decision to allot Channel 26 for DTV purposes and assign it to WATE-TV. Petitioners have demonstrated no special circumstances to warrant reconsideration of their repetitive petition and WATE, L.P. respectfully submits that, consistent with Section 1.429(i), the Commission should dismiss the petition as repetitious.¹²

II. Petitioners Own Pleading Demonstrates that Channel 18 Is Not A Viable Option For DTV

In an attempt to avoid dismissal of their entire Petition as repetitious, Petitioners for the first time claim that it would be appropriate to allot Channel 18 as an alternative DTV channel for WATE-TV.¹³ As the Petitioners own engineering demonstrates, however, that allotment simply is not viable. First, not only would a channel 18 assignment decrease significantly the population and coverage area served by the station, but it would cause interference to other

¹¹ See, e.g., Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lincoln, Osage Beach, Steelville and Warsaw, Missouri), 12 FCC Rcd 4987, 4989 (1997) ("Amendment of FM Table of Allotments - Lincoln"); MTS-WATS Market Structure, 63 RR2d 1828, 1833 (1987).

¹² In any event, the Commission's action in allotting Channel 26 for DTV purposes was fully consistent with its prior decisions in this proceeding and Petitioners have no basis for claiming surprise by the Commission's actions.

¹³ Petition at 5. Commission precedent is clear that, to the extent the Commission chooses to consider the Channel 18 proposal, the remainder of the petition may still be rejected as repetitious. See, e.g., Amendment of FM Table of Allotments-Lincoln, *supra* at 4989. In any event, the petition should be denied because Petitioners have failed to provide any reason why their alternative was not previously presented for consideration in a timely manner. See, e.g., AM Expanded Band, *supra* at ¶ 7.

area stations.¹⁴ Indeed, Petitioner's engineering analysis concludes that the only way to alleviate this interference is for WATE to operate at a significantly reduced power level - - 100 kW rather than the current 1 Mw. Operation at such a reduced power level would, as Petitioners' engineering further demonstrates, cause additional harm to WATE-TV's signal, reducing the area served by the station by nearly 20 percent and resulting in a loss of 12 percent of the population served by the station.¹⁵

In sum, far from demonstrating the viability of Channel 18 as an alternative channel, Petitioners' engineering demonstrates that the Commission's decision to assign Channel 26 to WATE-TV for DTV purposes was correct.¹⁶

¹⁴ Petition, Exhibit 1 at 2-3.

¹⁵ Id. at 3.

¹⁶ Although Petitioners also resurrect SCCC's initial call to allot Channel 5 to WATE-TV for DTV purposes, they make absolutely no effort to demonstrate that this channel is feasible. Petition at 3. In any event, as the Commission concluded in the Recon. Order, requests to change the DTV allotments of stations licensed to other parties where such parties have not agreed to the proposed change should be denied. Recon. Order, supra at Paragraph 187. Here, not only does WATE, L.P. not agree to any change to its DTV allotment, especially one that would cause such drastic harm to the station's signal, but they do not even allege to have even attempted to seek the consent of the licensee for such a change..

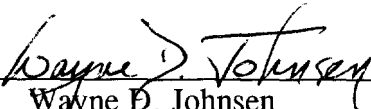
III. Conclusion

Petitioners have provided absolutely no basis for changing WATE-TV's DTV channel allotment. Accordingly, their petition should be dismissed as repetitious or, in any event, denied.

Respectfully submitted,

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May 26, 1998

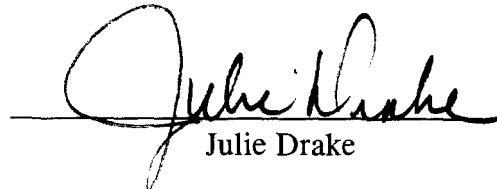
CERTIFICATE OF SERVICE

I, Julie Drake, a legal secretary with the law firm of Wiley, Rein and Fielding do hereby certify that a true copy of the foregoing Opposition to Petition for Reconsideration was mailed, first class mail, postage prepaid, this 26th day of May, 1998 to:

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